

Message Text

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PAGE 01 KABUL 06070 160522Z

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ACTION OPIC-12

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R 160458Z AUG 73

FM AMEMBASSY KABUL

TO SECSTATE WASHDC 4711

UNCLAS KABUL 6070

E.O. N/A

TAGS: EFIN, AF

SUBJ: OPIC REQUEST FOR LEGAL COUNSEL

REF: (A) STATE 153528 (B) KABUL 5635 (C) KABUL A-50, JULY 31, 1973

1. EMBASSY HAS CONTACTED DR. SAM TARAKI WHO REPORTS THAT HE WILL BE DELIGHTED TO REPRESENT OPIC ON YAQUB LEATHER PROJECT. TARAKI'S RETAINER WILL BE DOLLARS 100 PER MONTH (OR EQUIVALENT IN AFGHANIS AT EXCHANGE RATE USED BY U.S. EMBASSY ON DAY OF TRANSACTION) FOR WHICH HE WILL UNDERTAKE TO PROVIDE ADVICE AND INTERPRETATION ON NEW AFGHAN LEGAL STRUCTURE AS IT EVOLVES AS WELL AS LEGAL DOCUMENTATION REQUIRED FOR ANY LOAN TRANSACTION.

2. THERE FOLLOWS DR. TARAKI'S REPLIES TO THE QUESTIONS RAISED IN REF A:

A) "CONCERNING THE JUDICIAL SYSTEM AND THE LAWS OF THE COUNTRY: THROUGH THE PRESIDENT OF THE REPUBLIC'S DECREE, THE CONSTITUTION IS NULL AND VOID. MANY POWERS WHICH WERE VESTED IN THE MONARCH ARE GIVEN TO THE PRESIDENT OF THE STATE. PARLIAMENT IS ABOLISHED, AND SOME OF ITS POWERS ARE TRANSFERRED TO THE PRESIDENT. THE INDEPENDENT JUDICIAL SYSTEM HAS ENDED.

B) THE JUDICIAL SYSTEM, COURTS, JUDGES, ETC. ARE ACTING UNDER A "COUNCIL OF JUSTICE" THE HEAD OF WHICH IS THE MINISTER OF JUSTICE, WHO AT THE SAME TIME IS ATTORNEY GENERAL. THE MEMBERS OF THIS COUNCIL CONSIST OF THE DEPUTY MINISTER OF JUSTICE, DEPUTY ATTORNEY GENERAL AND A CHIEF JUSTICE OF

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PAGE 02 KABUL 06070 160522Z

THE SUPREME COURT (RAIES THAMEEZ). SO FAR THESE PEOPLE

ARE THE MEMBERS OF THE "COUNCIL OF JUSTICE," HOWEVER, THE DECREE DOES NOT LIMIT THE MEMBERS TO THESE PEOPLE ALONE. IT AUTHORIZES THE MINISTER OF JUSTICE, THAT IF NECESSARY, HE CAN PROPOSE TO THE PRIME MINISTER OTHERS TO BE MEMBERS IN ADDITION TO THOSE ALREADY APPOINTED. THE PRIME MINISTER'S APPROVAL OF THE PROPOSAL IS SUFFICIENT FOR THE APPOINTMENTS.

C) AS FOR THE LAWS, THERE ARE THREE SOURCES: (1) DECREE LAWS ARE SUPREME; (2) OLD STATUTORY LAWS ARE ENFORCED PROVIDED THEY ARE NOT CONTRARY TO THE DECREES OR THE POLICIES OF THE NEW REGIME; (3) ALONG WITH THE DECREES AND THE OLD LAWS (THOSE QUALIFIED AS STATED ABOVE) THE ISLAMIC JURISPRUDENCE OF HANAFI LEGAL SYSTEM IS ACCEPTED AS A SOURCE OF LAW, PROVIDED IT IS NOT CONTRARY TO THE DECREES AND POLICIES OF THE NEW REPUBLIC."

3. EMBASSY SUGGESTS THAT OPIC ALSO EXAMINE REF B WHICH CONTAINS MISSION'S INTERPRETATIONS OF THREE BASIC DEGREES ISSUED JULY 28 THAT FORM LEGAL UNDERPINNING OF NEW REGIME.

4. REF C CONTAINS ENGLISH TEXT OF THE THREE DEGREES.
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